

CIVIL SERVICE COMMISSION MINUTES
AUGUST 5, 2009

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
W. Dale Bailey
William O'Connor

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

September 2, 2009

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
AUGUST 5, 2009**

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7	8	7	10,11,12 13,14,15

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Krauel. Carried.

CLOSED SESSION AGENDA

County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Casillas: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Fern
Steiner, Esq., on behalf of **Oscar Orellana**, Mental
Health Aide, appealing a Final Order of Suspension and
Charges from the Health and Human Services Agency.

OPEN SESSION AGENDA

County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of July 1,
2009.

Approved.

2. Approval of the Minutes of the special meeting of July 17,
2009.

Approved.

CONFIRMATION OF ASSIGNMENTS

3. Commissioner Bailey: Julie Buechler, Esq., on behalf of **2009-08**, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Krauel: Karen Paredes, Worksite Organizer, SEIU Local 221, on behalf of **Mary Rowin**, Insect Detection Specialist, appealing a Final Order of Suspension and Charges from the Department of Agriculture, Weights and Measures.

Confirmed.

5. Commissioner Newman: Kay Ryan, Director, Advocacy Center, SEIU Local 221, on behalf of **Jerome Maull**, Residential Care Worker II, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINE

Findings

6. Commissioner Casillas: Fern Steiner, Esq., on behalf of **Oscar Orellana**, Mental Health Aide, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Oscar Orellana, (Employee), from a written Final Order of Suspension and Charges suspending him for ten (10) working days from the class and position of Mental Health Aide (Class No. 4839) in the Health and Human Services Agency, (Agency), was presented to the Civil Service Commission. The Commission appointed Commissioner A. Y. Casillas to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on June 30, 2009.

Employee is a Mental Health Aide in the Psychiatric Hospital of the County's Health and Human Services Agency. Since his employment as a Mental Health Aide began in 2002, he has established a record of consistent above standard performance ratings. The Charges in the Final Order of Suspension arise from Employee's interaction with a difficult and violent patient on February 10, 2009. After

becoming increasingly agitated and violent, the patient had to be physically restrained and involuntarily medicated. At the urgent request of a nurse, Employee responded to assist in restraining a patient. Employee tried to restrain the patient while two nurses involved stood nearby and watched. In spite of training which instructed that all present staff assist Employee in restraining a patient under these circumstances, the nurses stood by. The patient complained that Employee placed his foot on her head in the process of restraining her and that staff dropped her on her tailbone when attempting to place her on a gurney after the restraint. However, the patient suffered only minor bruising and it could not be determined whether such bruising occurred from the restraint or as a result of some of her other violent and self-destructive behavior. Employee took the steps necessary to subdue the patient. He used only that force which was required to subdue the patient. The Hospital investigated the event and determined that Employee essentially used excessive force against the patient and that he made insulting comments to MG preceding the restraint. At the Commission hearing, the Agency failed to prove that Employee was guilty of the gravamen of the charges. Any errors by Employee were relatively minor, not warranting discipline.

The Agency failed to prove the charges in the Order, with the exception of Employee's admission to Cause II (B). Employee is not guilty of Cause I, Conduct Unbecoming an Officer or Employee of the County; Cause II (A), Discourteous Treatment of the Public; and Cause III, Conduct that is Incompatible or Inimical to the Public Service.

It is recommended that the Final Order of Suspension be reversed; that Employee be awarded back pay, benefits and interest for any suspension already served relating to the Final Order of Suspension, minus any wages he received from outside employment; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Newman. Carried.

Commissioner Newman stated that the above findings and recommendations reflect a clear need for training within HHSA and that other employees of the Agency did not follow the proper training as reflected in the findings.

Motion by Newman to request the Commission's Executive Officer to communicate with HHSA to discuss what the

Commission believes to be a failure of training within the section covered by this appeal; and further that either the Executive Officer or HHSA report back to the Commission on the question of the perceived need for further training within the Agency on issues inherent in this matter; seconded by Bailey. Carried.

DISCRIMINATION

Complaints

7. **Grace Anggrainy**, Administrative Analyst II, Health and Human Services Agency, alleging discrimination by the Department of Purchasing and Contracting.

RECOMMENDATION: Assign Commissioner Casillas as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation Approved. Commissioner Casillas assigned.

CITIZEN COMPLAINT

8. **Stephen Novobilsky**, citizen complaint regarding treatment he received from employees in the Department of Housing and Community Development.

RECOMMENDATION: Deny Request.

Continued to September 2, 2009 meeting.

OTHER MATTERS

9. Public Input.

INFORMATION

10. **Eugene Arrington**, former Protective Services Assistant, withdrawal of appeal of an Order of Suspension and Charges from the Health and Human Services Agency. (Commissioner Krauel)

Withdrawn.

// /

// /

// /

11. Kay Ryan, Director Advocacy Center, SEIU Local 221, on behalf of **Jessie Herrera**, Building Maintenance Engineer Assistant, withdrawal of appeal of his placement on Compulsory Leave by the Department of General Services. (Commissioner Newman)

Withdrawn.

12. Julie Buechler, Esq., on behalf of **2009-06**, withdrawal of appeal of Order of Removal and Charges from the Probation Department. (Commissioner Krauel)

Withdrawn.

13. Health and Human Services Agency withdrawal of a Final Order of Reduction in Compensation and an Amended Final Order of Reduction in Compensation that were served on **Ricardo Gutierrez**, Health and Human Services Administrator III. (Commissioner Casillas)

Withdrawn.

14. **2009-05**, withdrawal of appeal of an Order of Termination and Charges from the Sheriff's Department. (Commissioner Bailey)

Withdrawn.

ADJOURNED: 2:55 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

SEPTEMBER 2, 2009

ASSISTANCE FOR THE DISABLED:

Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619) 531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619) 531-5205. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.